

Franklin District Council Fires in the Open Air Bylaw 2008

1. Title and Commencement

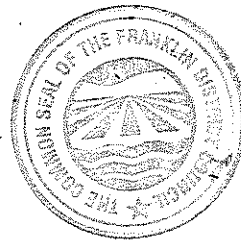
- (1) This Bylaw may be cited as the Franklin District Council Fires in the Open Air Bylaw 2008 and shall come into force on 15 December 2008.
- (2) This Bylaw applies to the Franklin District.

2. Fires in the Open Air Bylaw Validation

- (1) The Franklin District Council Fires in the Open Air Bylaw 2008 was duly made at a meeting of the Franklin District Council held on 27 November 2008 after completion of the special consultative procedure under section 86 of the Local Government Act 2002.
- (2) The Common Seal of the Franklin District Council was affixed hereto, pursuant to a resolution of Council, on 28 November 2008 in the presence of:



Mark Ball
Mayor



Sally Davis
Chief Executive

28th November 2008

Date

3. Scope

- (1) The general purpose of this Bylaw is:
 - (a) to allow Council to exercise control over the lighting of fires in the open air in the District and prevent smoke from fires in the open causing a nuisance; and
 - (b) to prevent the spread of fires involving vegetation.
- (2) This Bylaw is made pursuant to sections 145 and 146 of the Local Government Act 2002 and section 64 of the Health Act 1956.
- (3) Council has a further avenue of control over smoke nuisance in the Nuisances provisions of the Health Act 1956 and persons responsible for causing a smoke nuisance may be prosecuted under the provisions of either the Health Act 1956 or this Bylaw.
- (4) Regional Councils have responsibilities for discharges into air. Consents and approvals may be required from Regional Councils for discharges into air from fires in the open air. Accordingly, nothing in this Bylaw shall derogate from any provision of, or the necessity for compliance with, any rules or requirements imposed by either the Auckland Regional Council or Environment Waikato. Specifically, within the Auckland Region, the Proposed Auckland Regional Plan: Air, Land and Water prohibits fires in the open air, including within incinerators, in defined Urban and Coastal Air Quality Management Areas.
- (5) Nothing in this Bylaw shall be regarded as derogating from the provisions of the Forest and Rural Fires Act 1977 and the Forest and Rural Fires Regulations 2005.

4. Definitions and Interpretation

For the purposes of this Bylaw, the following definitions shall apply:

Acceptable means of fire suppression means a hose connected to a suitable water supply or an alternative means of fire suppression approved in writing in a particular case by an authorised officer.

Authorised officer means any person warranted by Council in accordance with section 177 of the Local Government Act 2002 to enforce this Bylaw.

Barbeque means any fixed or portable solid fuel burning equipment or device designed or intended for the cooking of food in the open air.

Chief Executive means the Chief Executive of the Council.

Council means the Franklin District Council.

Ethnic cooking fire means any fire lit for the purpose of cooking or preparing food by hangi, umu or similar ethnic cooking methods.

Fire permit means a permit to light a fire in the open air granted in accordance with clause 7(4) of this Bylaw.

Incinerator means a container used for the burning of waste material, which is made of non-combustible materials and which has a grate and a lid or spark arrestor.

Incinerator fire means a fire within an incinerator.

Open air means in the open whether on or above ground level.

Open fire season means a period of time, whether fixed or indefinite, during which the lighting of fires in the open air is permitted.

Outdoor gas appliance means a gas barbeque, gas patio heater, gas brazier or other heating appliance.

Prohibited fire area means all residential and business zones within the urban settlements of Pukekohe, Tuakau and Waiuku as defined in the operative Franklin District Plan.

Prohibited fire season means the period of time, whether fixed or indefinite, during which the lighting of fires in the open air is prohibited in accordance with clause 8 of this Bylaw.

Restricted fire season means a period of time, whether fixed or indefinite, during which period permits or authorities are required for the lighting of fires in the open air in accordance with clause 7 of this Bylaw.

Rural area means rural, coastal, rural-residential and village countryside living zones as defined in the operative Franklin District Council District Plan.

Urban area means residential, business, rural village and coastal village zones as defined in the operative Franklin District Council District Plan.

For the purposes of this Bylaw, the word "shall" refers to practices that are mandatory for compliance with this Bylaw, while the word "should" refers to practices which are advised or recommended.

5. Prohibited Fire Areas

- (1) No person shall, within any prohibited fire area, light any fire in the open air, except as provided in sub-clause (2).
- (2) Barbeques, ethnic cooking fires and outdoor gas appliances are permitted in prohibited fire areas, subject to those provisions of clause 6, 7 and 8 of this Bylaw that relate to such fires.

6. Fires in the Open Air (excluding prohibited fires areas)

- (1) In any urban area during any open fire season, no person shall light any fire in the open air other than within an incinerator.
- (2) No person shall, in any open fire season, light any fire in the open air including a barbeque, ethnic cooking fire, fireworks or an incinerator fire, under the following conditions:
 - (a) where the location, wind, or other conditions cause or are likely to cause the fire to become:
 - (i) a danger to any person or property; or
 - (ii) out of control or spread beyond the limits of the land on which it is lit; or
 - (iii) a smoke or ash nuisance to any person.
 - (b) within 3 metres of any part of a building, tree, hedge, fence or other combustible material (excluding outdoor gas appliances); or
 - (c) in urban areas, without continuous supervision being maintained at all times; or
 - (d) in rural areas, without reasonable supervision being maintained in relation to the type of fire; or
 - (e) without an acceptable means of fire suppression being available where the fire is located on residential premises, or land adjoining urban areas.
- (3) No person shall, in any open fire season, light any fire in the open air (excluding barbeques, ethnic cooking fires or incinerator fires) within 32 metres either side of a power transmission line.

7. Restricted Fire Season

- (1) An authorised officer may at any time prescribe a restricted fire season within the District or in any specified part or parts thereof, and may at any time cancel or vary such a prescription.
- (2) Any person wishing to obtain a fire permit during a restricted fire season shall apply to the authorised officer.
- (3) The authorised officer may from time to time prescribe a form of application for the purposes of sub-clause (2).
- (4) Upon receiving an application under sub-clause (2) an authorised officer may issue a fire permit and may impose such conditions and restrictions in respect of the permit as the authorised officer considers reasonably necessary having regard to:
 - (a) any cultural requirements or practices;
 - (b) the location, terrain, natural vegetation, and the existence of buildings or other structures and any other fuels;
 - (c) protection of the safety, health and convenience, of persons on the land in respect of which the permit is issued and adjoining lands and premises; and
 - (d) the proximity to any power transmission line and any advice from Transpower.
- (5) Nothing in this clause shall apply to an ethnic cooking fire, or the use of an incinerator, barbeque, or outdoor gas appliance. Provided that Council may in certain circumstances include these where it considers it necessary to do so.

8. Prohibited Fire Season

- (1) An authorised officer may at any time prescribe a prohibited fire season within the District or in any specified part or parts thereof, and may at any time cancel or vary such a prescription.
- (2) In a prohibited fire season, no person shall light any fire in the open air including an ethnic cooking fire, an incinerator or a barbeque, and no person being the occupier of any land shall cause, assist with, permit or suffer any fire to be lit or continue to burn in the open air on the land.
- (3) Nothing in sub-clause (2) applies to the use of gas barbeques, provided that the authorised officer may also prohibit the use of outdoor gas appliances at his or her discretion.

9. Public Notice of Restricted or Prohibited Fire Season

Public notice of the prescription of a restricted or a prohibited fire season made under clause 7(1) or 8(1) of this Bylaw, or the cancellation or variation of such a prescription, shall be made by:

- (a) public broadcast or other similar means within the District; or
- (b) a notice inserted in a daily or community newspaper circulating within the District; or
- (c) any other effective means.

10. Revocation or Suspension of Permits

- (1) Subject to Clause 10 (2), every fire permit issued in accordance with clause 7(4) of this Bylaw shall remain in force from the date of issue until the expiry of the period, date or time specified in the permit, unless a prohibited fire season is declared.

- (2) Notwithstanding any other provisions of this Bylaw, any permit issued under this Bylaw may be revoked or suspended by an authorised officer at any time, or suspended for such periods of time and on such terms and conditions as the authorised officer may consider reasonable in the circumstances.

11. Fees for Permits

The Council may from time to time, by resolution publicly notified, specify the fee or fees payable in respect of the issue of any permit under this Bylaw. Any fee prescribed shall be paid upon uplifting the permit.

12. Council May Extinguish Fires

- (1) Where a fire has been lit or allowed to burn in:
- (a) a prohibited fire area in breach of clause 5 of this Bylaw; or
 - (b) an open fire season in breach of clause 6 of this Bylaw; or
 - (c) a restricted fire season in breach of the conditions of a fire permit issued in accordance with clause 7(4) of this Bylaw; or
 - (d) a prohibited fire season in breach of clause 8 of this Bylaw;

any authorised officer or agent of Council (including the New Zealand Fire Service,) may extinguish any such fire or direct an occupier of land on which the fire is located, or the person who lit the fire, to extinguish it.

- (2) Council may recover costs associated with extinguishing a fire pursuant to Clause 12 (1), from the occupier, or the person who lit the fire.
- (3) Where any person who lit a fire in the open air disregards a Council direction under Clause 12 (1) to extinguish the fire, the authorised officer may authorise an agent of the Council (including the New Zealand Fire Service) to extinguish the fire and to take such other steps as may be reasonably necessary to ensure the safety of any person or property.
- (4) The Council may recover from the occupier of the land, or the person who lit the fire, any costs incurred by it as a result of its officer or agents taking any action authorised by the authorised officer under sub-clause (3).

13. Live Ashes

No person shall place or allow to be placed any live cinders, embers or ashes in or upon any land in either an urban area or rural area within 6 metres of a building other than:

- (a) in a container made and constructed of concrete or other similar fire-resistant material to prevent the transmission of heat to any other combustible material;
- (b) in a pit or upon any fire-resistant substance in a manner which will prevent the spreading of fire or heat by the action of wind or otherwise; or
- (c) as part of an ethnic cooking process including hangi and umu.

14. Managing Fire Risk on Rural Land

- (1) In addition to the powers contained in sections 183 and 184 of the Local Government Act 2002, no occupier or any other person having the control of any land shall allow any vegetation to exist within 6 metres of any building on adjoining land, in such a condition or state that it is likely to become a source of risk from fire.

- (2) An authorised officer may, by written notice, giving reasonable time, require an occupier or person having control of any land to remove any vegetation that could increase the risk of fire.

15. Storage of Combustible Materials

- (1) Except as provided in Clauses 15 (2) and 15 (3), no occupier of any land shall permit the storage or stacking in the open of any combustible material, unless the distance of the stack from any boundary other than a street boundary is at least equal to the height of the stack, but in any case not less than 1.4 metres.
- (2) A stack of combustible material may be placed closer to the boundary than the distance specified in Clause 15 (1) if a brick, stone, or concrete wall extending not less than 450 millimetres above and not less than 1.4 metres beyond the length of the stack, is situated between the stack and the boundary.
- (3) A stack of combustible material may, with the written approval of the adjoining owner and of the authorised officer, be placed closer to the boundary than the distance specified in Clause 15 (1) where any of the following conditions continue to exist:
- (a) where there is a brick, stone or concrete wall as defined in Clause 15 (2) without openings situated on the adjoining property and within 1.4 metres of the common boundary; or
 - (b) where there are no buildings on the adjoining land; or
 - (c) where there is no danger of a stack adjacent to a boundary increasing the risk of the spread of fire.

16. Storage of Hay

- (1) No occupier of any land shall permit the storage or stacking in the open of more than 3 cubic metres of hay, or similar material, unless the distance of the stack from any adjacent land is not less than 6 metres and the intervening space is at all times kept free from any rubbish or obstruction of any kind.
- (2) No occupier of any land shall permit the storage of more than 1 cubic metre of hay or similar material in any building attached to, or at a distance of less than 6 metres from, any other building unless the first mentioned building has a roof of approved fire-resistant material and walls constructed wholly of brick, stone, or concrete or any combination of brick, stone and concrete and complying with the specifications mentioned in clause 15 (2) of this Bylaw.
- (3) The provisions of clause 16 (2) shall not apply in any case where agricultural produce is kept or stored in any building used wholly or partly for agricultural or horticultural purposes or only for the purpose of or in connection with a stable for the keeping of horses.

17. Offences and Penalties

Any person who fails to comply with the requirements of this Bylaw commits an offence and shall be liable on summary conviction to the penalty set out in section 242(4) of the Local Government Act 2002, being a fine not exceeding \$20,000.